

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION**

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 57

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JAMES R. LUND

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Appeal No. 97/0338  
Application 08/229,398<sup>1</sup>

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HEARD: October 15, 1997

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Before STONER, Chief Administrative Patent Judge, CALVERT and  
MEISTER, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

**DECISION ON APPEAL**

This is an appeal from the final rejection of claims 52 to 57, all the claims remaining in the application.

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<sup>1</sup> Application for patent filed April 18, 1994. According to appellant, this application is a continuation of Application 07/982,249 filed November 25, 1992, now abandoned, which is a continuation of Application 07/777,758 filed October 15, 1991, now abandoned, which is a division of Application 07/556,491 filed July 26, 1990, now U.S. Patent No. 5,112,095 issued May 12, 1992.

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Claim 52, the only independent claim, is illustrative of the subject matter in issue and is reproduced in the appendix to this decision.

The references applied by the examiner in the final decision are:

Turner	Des. 300,918	May 2, 1989
Willey	4,952,006	Aug. 28, 1990

G.T. Styling's BUG-GARD deflectors for the Jeep Cherokee and Range Rover, shown in photographs in Appendices E and F, respectively, in appellant's brief.<sup>2</sup>

Claims 52 and 57 stand finally rejected under 35 U.S.C. § 103 "as being unpatentable over Willey, optionally in view of Turner, ... in view of GT Styling [the BUG-GARD deflectors]" (examiner's answer, page 3).

The Willey reference discloses a hood shield assembly 10 which is attached to the hood 14 of a vehicle 12 and extends upward over the front of the hood 46, as shown in Fig. 3. The

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<sup>2</sup> These photographs were originally filed on February 23, 1993, as Exhibits E and F, respectively, of appellant's Remarks to Preliminary Amendment and Information Disclosure Statement (Paper No. 25) in parent application 07/982,249.

shield extends laterally from one side of the hood to the other, as shown in Fig. 2.<sup>3</sup>

The Jeep Cherokee vehicle to which the BUG-GARD deflector is attached, as shown in the Exhibit E photographs, has a hood somewhat like that shown in Willey's Fig. 1, in that it terminates short of the top edge of the front of the vehicle. The BUG-GARD is attached to the body, not the hood, and wraps around the top leading edges of the front fenders.

The Range Rover vehicle shown in the Exhibit F photographs has a hood which not only covers the engine but also is integrated with the top edges of the front fenders. The BUG-GARD is attached to the front of the hood and wraps around the corners of the hood, which also constitute the leading edges of the front fenders.<sup>4</sup>

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<sup>3</sup> The drawings of the Willey patent seem to be somewhat inconsistent, in that Fig. 1 shows a hood which does not extend around the top front edge of the vehicle, while Fig. 3 shows the front of the hood curving down to a trim piece 42 on its lowermost portion 44, spaced above a lower panel by clearance "C." It is evident to us from reading the Willey disclosure that the hood shown in Fig. 3 is the type of hood intended to be disclosed.

<sup>4</sup> Appellant has raised a question as to whether the Range Rover BUG-GARD constitutes prior art as to him. This question is moot in view of our disposition of the appeal.

Claim 52 defines a vehicle which differs from the Jeep Cherokee and Range Rover, in that it recites that "the hood does not include the vehicle's top front and side corner surfaces which form a leading edge of the vehicle's fender."<sup>5</sup> In other words, the claim is drawn to a vehicle having a hood arrangement as disclosed by Willey (see footnote 3, supra). The issue in this case therefore is, would it have been obvious to one of ordinary skill in the art, in view of the Jeep Cherokee and/or Range Rover BUG-GARDS, to provide the Willey shield with a portion wrapping around the leading edge of the fender.

Having fully considered the record in light of the arguments presented by appellant in his brief and reply brief, and by the examiner in the answer, we conclude that the applied prior art does not make out a prima facie case of obviousness of the claimed subject matter.

A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary

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<sup>5</sup> We note that this language appears to lack antecedent basis in the description, as required by 37 CFR § 1.75(d)(1). Other claim language lacking such antecedent basis is "wherein when the hood ... or fender underneath" (claim 52, lines 27 to 35), and "wherein said mounting ... from the vehicle" (claim 57, lines 2 to 10).

skill in the art. In re Rinehart, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976). See also In re Spada, 911 F.2d 705, 707 n.3, 15 USPQ2d 1655, 1657 n.3 (Fed. Cir. 1990); In re Lalu, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1984). In the present case, we do not consider that a prima facie case of obviousness is presented because none of the applied references teaches a shield for a vehicle which covers a portion of the vehicle other than that to which the shield is rigidly attached. Thus, the Willey shield is rigidly attached to the hood and protects only the front of the hood; the Jeep Cherokee BUG-GARD (Ex. E) is rigidly attached to the upper portion of the grille and thereby to the fenders and covers only that portion and the top front of the fenders; and the Range Rover BUG-GARD (Ex. F) is rigidly attached to the combined hood and fender tops and covers the front of the hood and the front tops of the fenders. By contrast, although the claimed shield is mounted to the hood, it also wraps around the leading edge of the fender, even though, as recited, the hood does not include the leading edge of the fender.

While we agree with the examiner that the Jeep Cherokee and Range Rover BUG-GARD shields would obviously provide increased protection for the front fender surface (answer, page 5), we do

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not agree with his conclusion that the claimed structure would thereby have been obvious. In our view, the BUG-GARD shields would suggest arranging a shield in front of a fender (or other part of a vehicle) such that the shield would be in front of the fender at all times, but not otherwise. Thus, it would not have been obvious to extend the ends of the Willey shield to wrap around the fenders, because such extensions would not be in front of the fenders when the hood was raised.

Since the prior art does not establish a prima facie case of obviousness, it is unnecessary to consider the evidence submitted by appellant purporting to show commercial success and copying by others. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Grabiak, 769 F.2d 729, 733, 226 USPQ 870, 873 (Fed. Cir. 1985).

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The examiner's decision to reject claims 52 to 57 is  
reversed.

**REVERSED**

BRUCE H. STONER, JR., Chief	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
IAN A. CALVERT	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
JAMES M. MEISTER	)	
Administrative Patent Judge	)	

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**APPENDIX**

52. A motor vehicle having a hood and fender protected from denting or marring from stones or other hard object comprising:

a motor vehicle having a hood and fender arrangement wherein the hood does not include the vehicle's top front and side corner surfaces which form a leading edge of the vehicle's fender;

a shield device mounted to said hood, said shield device comprising a hood protector portion having a first end and a second end and a front edge and a back edge, and a fender protector portion located adjacent at least one of said ends of said hood protector portion; and

mounting member for mounting to the vehicle's hood, said mounting member extending rearwardly from the front edge of the hood protector portion, extending underneath the hood and mounted to the hood's underside;

wherein said hood protector portion extends from said first end, adjacent a front left portion of said hood, outwardly across a front surface of the hood to said second end, adjacent a front right portion of said hood, said hood protector generally extends forwardly away from the hood at said front edge, and continues to then curve upwardly and rearwardly over the hood's front surface to the back edge of the hood protector portion;

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wherein said fender protector portion is constructed to wrap around the leading edge of the fender;

wherein when the hood is moved to an open position to expose the vehicle's engine, the fender protector portion moves in unison with the hood away from the vehicle's top front and side corner surfaces comprising the leading edge of the vehicle's fender; and

wherein the device is made of a material capable of holding its own shape so that stones and other hard objects striking the device are deflected without denting or marring the hood or fender underneath.